

Water Entitlements Purchase Contract Midlands Irrigation District

Tasmanian Irrigation and the Purchaser agree to complete the sale and purchase of the Water Entitlements in accordance with and perform their other obligations under this Water Entitlements Purchase Contract.

The Schedule

This schedule constitutes the schedule for the purposes of this Water Entitlements Purchase Contract

THE PURCHASER'S DETAILS

1. Name of Purchaser

2. Contact details for Purchaser

(a) Address

(b) Postal address

(c) Contact person #1

(i) Name

(ii) Phone number

(iii) Email address

(d) Contact person #2

(i) Name

(ii) Phone number

(iii) Email address

PURCHASE DETAILS

3. Serial Number

4. Irrigation District

Midlands Irrigation District

5. Volume

6. Flow Rate

7. Zone

Zone 3 – Macquarie River

8. Purchase Price

9. Completion Date

TASMANIAN IRRIGATION'S DETAILS

10. Address

Level 2, Terminal Building, Launceston Airport, Western Junction, Tasmania

11. Postal address

PO Box 84, Evandale, Tasmania 7212

12. Phone number

03 6398 8441

13. Email address

enquiries@tasirrigation.com.au**STATEMENT ON THE COLLECTION AND USE OF PERSONAL INFORMATION**

Personal information is collected from you by Tasmanian Irrigation for the purpose of completing the sale of Water Entitlements, administering the Irrigation District and maintaining a public register of Water Entitlements for the Irrigation District (including in an online format). Your personal information will be used by Tasmanian Irrigation for the purpose for which it is collected and for other purposes permitted by the Water Management Act (Tas) 1999, the Irrigation Clauses Act (Tas) 1973 (if applicable) and any regulations made under those Acts as they apply to the Irrigation District. Personal information will be managed by Tasmanian Irrigation in accordance with the Personal Information Protection Act (Tas) 2004 and the Privacy Act (Cth) 1988 as applicable and may be accessed by the individual to whom it relates on request to Tasmanian Irrigation. You may be charged a fee for this service.

Date of agreement

___ / ___ / ___

Parties

1. **TASMANIAN IRRIGATION PTY LTD** ACN 133 148 384
("Tasmanian Irrigation")
2. **THE PURCHASER** named in the schedule
("the Purchaser")

Background

1. The Irrigation District is an irrigation district appointed under section 167(1) of the Water Management Act 1999.
2. Tasmanian Irrigation is the responsible water entity under the Water Management Act 1999 and the undertaker under the Irrigation Clauses Act 1973 for the Irrigation District.
3. It is contemplated that an Amendment Bill may be introduced to and passed by the Tasmanian Parliament prior to Completion, which if enacted is likely to substantially amend the Water Management Act 1999 and repeal the Irrigation Clauses Act 1973.
4. This agreement sets out the terms on which Tasmanian Irrigation has agreed to grant the Water Entitlements to the Purchaser.

The parties agree as follows

1. Interpretation

1.1 Definitions

In this agreement:

- (a) "Amendment Bill" means a bill of the Parliament of the State of Tasmania that seeks to substantially amend the Water Management Act 1999 and repeal the Irrigation Clauses Act 1973;
- (b) "a Business Day" means a day on which trading banks are open for business in both Hobart and Launceston in Tasmania;
- (c) "the BBSY" for a day means the interest rate quoted as the three (3) month Australian Bank Bill Swap Bid Rate on the BBSY page by Reuters Information Service as at 10.00am on that day or, if the BBSY is not quoted on that day, at 10.00am on the last prior day on which it was quoted;
- (d) "Completion" means completion of the grant of the Water Entitlements under clause 2;
- (e) "the Completion Date" means the Completion Date specified in the schedule;
- (f) "a Connection Point" means a point at which Tasmanian Irrigation has agreed that a person may have access to water from the Scheme;
- (g) "the Deposit" means the Deposit paid under clause 4.1;
- (h) "the Deposit Payment Date" means the date of this agreement;
- (i) "the Flow Rate" means the Flow Rate specified in the schedule;
- (j) "GST" has the meaning given that term by the GST Act;
- (k) "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999;

- (l) "Insolvent" when used with reference to:

- (i) any person, means a person:
 - A. who is unable to pay his, her or its debts as they fall due or is deemed to be unable to pay his, her or its debts as they fall due under any applicable Statute; and
 - B. who has ceased or has threatened to cease payment of its debts generally;
- (ii) a natural person, means a natural person:
 - A. who is an undischarged bankrupt; or
 - B. who makes any composition or arrangement with his or her creditors;
- (iii) a corporation, means a corporation:
 - A. in respect of which a liquidator or a provisional liquidator has been appointed except for reconstruction or amalgamation;
 - B. in respect of the property of which a controller is appointed;
 - C. under administration; or
 - D. which makes a compromise or arrangement with its creditors,

and "Insolvency" has a corresponding meaning;

- (m) "the Irrigation District" means the Irrigation District specified in the schedule as varied (if at all) under the Water Management Act 1999;
- (n) "the Irrigation Right" means a right to an annual allocation up to the Volume from the Scheme in each irrigation season of the Irrigation District to be conferred by one or more agreements on the terms of the agreement forming annexure 2 subject to amendment under clause 3.2;
- (o) "notify" means serve a written notice;
- (p) "the Purchase Price" means the price for the Water Entitlements specified in the schedule;
- (q) "the Purchaser" means the Purchaser named in the schedule;
- (r) "the Scheme" means the undertaking as defined by section 2(1) of the Irrigation Clauses Act 1973 of the Irrigation District;
- (s) "Statute" includes regulations and any other delegated legislation and amendments, consolidations or replacements of and proclamations, orders and notices issued under a Statute as the meaning is extended by this agreement;
- (t) "the Trading Rules" means the Trading Rules specified in the Water Entitlements subject to amendment under clause 3.2;
- (u) "the Volume" means the Volume of water specified in the schedule;
- (v) "the Water Entitlements" means the Irrigation Right and the Zoned Flow Delivery Rights;
- (w) "the Water Entitlements Register" means the Water Entitlements Register maintained by Tasmanian Irrigation in respect of the Irrigation District as required by Statute and the Trading Rules;
- (x) "the Winter Delivery Period" has the same meaning as it does in the agreement forming annexure 3;

- (y) “the Zones” means the Zones of the water delivery system of the Irrigation District specified in the schedule with reference to the Zone Map;
- (z) “the Zone Map” means the map of the water delivery system of the Irrigation District identifying separate zones forming annexure 1; and
- (aa) “the Zoned Flow Delivery Rights” means the following rights for a share of the capacity of the Scheme in each Winter Delivery Period:
 - (i) where there is one Zone only, the right to deliver water within the Zone at the Flow Rate; and
 - (ii) where there is more than one Zone, a separate right to deliver water within each of the Zones to which part of the Flow Rate is allocated under clause 3.3(c) at the rate equal to the part of the Flow Rate allocated to that Zone,
 on the basis that the right for each Zone is a separate Zoned Flow Delivery Right to be conferred by a separate agreement on the terms of the agreement forming annexure 3 subject to amendment under clause 3.2.

1.2 General

In this agreement, unless the context otherwise requires:

- (a) the word “include” does not exclude;
- (b) the singular includes the plural and vice versa;
- (c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (d) a reference to any gender includes all genders;
- (e) a reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure, or exhibit of or to this agreement and a reference to this agreement includes any recital, clause, schedule, annexure or exhibit;
- (f) a recital, schedule, annexure or a description of the parties forms part of this agreement;
- (g) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (h) a reference to any party to this agreement, or any other document or arrangement, includes that party’s executors, administrators, substitutes, successors and permitted assigns;
- (i) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (j) where an expression is defined anywhere in this agreement, it has the same meaning throughout;
- (k) headings are for convenience of reference only and do not affect interpretation;
- (l) no provision of this agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this agreement or that provision;
- (m) a reference to any Statute includes that Statute as amended, consolidated or replaced; and
- (n) a reference to any thing (including any right) includes any part of that thing, but nothing in this clause 1.2(n) implies that performance of part of an obligation constitutes performance of the entire obligation.

2. Completion

The parties must complete the sale and purchase of the Water Entitlements on the Completion Date.

3. Grant of the Water Entitlements

3.1 Agreement to grant

Tasmanian Irrigation agrees to grant the Water Entitlements to the Purchaser on Completion:

- (a) subject to and in exchange for the Purchaser paying the Purchase Price to Tasmanian Irrigation in full as required by this agreement; and
- (b) subject to the Purchaser (or the Purchaser’s nominee) on Completion entering the agreements required under clause 3.3 in respect of the Water Entitlements granted to it.

3.2 Amendment of Water Entitlements

If an Amendment Bill is enacted and commences before Completion, Tasmanian Irrigation may amend the terms of the Water Entitlements, the Connection Agreement and the Trading Rules by notice in writing to the Purchaser to the extent that Tasmanian Irrigation considers in good faith that amendment is necessary or desirable so that the Water Entitlements, the Connection Agreement and the Trading Rules continue to have the same effect so far as is reasonably practicable in the context of the legislative amendments made by the Amendment Bill.

3.3 Method of grant

- (a) The Irrigation Right is to be granted by Tasmanian Irrigation and the Purchaser (or the Purchaser’s nominee) entering an agreement in the form of annexure 2 for the Volume.
- (b) The Zoned Flow Delivery Rights are to be granted by Tasmanian Irrigation and the Purchaser (or the Purchaser’s nominee) entering a separate agreement in the form of annexure 3 for each Zoned Flow Delivery Right.
- (c) Where there is more than one Zone, the Flow Rate will be divided among the Zones in the manner:
 - (i) notified by the Purchaser to Tasmanian Irrigation at least seven (7) days before the Completion Date; or
 - (ii) if the Purchaser does not notify Tasmanian Irrigation within the time allowed by clause 3.3(c)(i), determined by Tasmanian Irrigation.

3.4 Connection for delivery of water

- (a) The Purchaser agrees that neither Water Entitlement will be granted under clause 3.3 with a Connection Point attached to it in the Water Entitlements Register unless the Purchaser is entitled to have a Connection Point attached to the Water Entitlement under a separate agreement with Tasmanian Irrigation.
- (b) The Purchaser waives and agrees not to exercise any rights it might have arising otherwise than under a separate agreement with Tasmanian Irrigation to require:
 - (i) a connection to the Scheme to be provided;
 - (ii) water to be delivered at any point; or
 - (iii) that the Scheme be connected to any land whatsoever.

- (c) The rights the Purchaser waives and agrees not to exercise under clause 3.4(b) include any rights which arise under section 23(5) or section 31 of the Irrigation Clauses Act 1973.

3.5 Effect of the grants

The grant of the Water Entitlements under clause 3.3 fully discharges the obligations of Tasmanian Irrigation arising on Completion.

3.6 Effect of this agreement

This agreement to grant the Water Entitlements does not constitute an irrigation right within the meaning of section 23(2) of the Irrigation Clauses Act 1973 and does not confer any right to take water from the Scheme or to any share of the delivery capacity of the Scheme.

4. The Purchase Price

4.1 The Deposit

The Purchaser must pay to Tasmanian Irrigation without set off or counterclaim an amount equal to ten per cent (10%) of the Purchase Price by way of deposit by 5.00 pm on the Deposit Payment Date.

4.2 Balance of Purchase Price

The Purchaser must pay the balance of the Purchase Price to Tasmanian Irrigation without set off or counterclaim on Completion.

4.3 Method of payment

The Deposit and the balance of the Purchase Price are to be paid by:

- (a) a cheque that is restrictively endorsed with the words "Not Negotiable" payable to Tasmanian Irrigation Pty Ltd; or
- (b) another payment method approved by Tasmanian Irrigation.

5. Purchaser's warranty

The Purchaser warrants that it has the power, authority and capacity to enter this agreement and to perform its obligations under this agreement.

6. Purchaser's enquiries and reliance

6.1 No warranties

The Purchaser agrees that:

- (a) neither Tasmanian Irrigation nor any person acting on Tasmanian Irrigation's behalf gave any warranty or representation in relation to this agreement or its subject matter; and
- (b) no warranty, guarantee, description or representation is implied from anything which occurred during the negotiations between the parties or their representatives before the signing of this agreement.

6.2 Enquiries

The Purchaser:

- (a) before it entered this agreement:
 - (i) obtained all the information it required; and
 - (ii) investigated the Water Entitlements including the terms on which they will be issued and the Scheme as far as it wanted; and

- (b) enters this agreement relying solely on its own judgement and has not relied upon any warranty, guarantee, description or representation from Tasmanian Irrigation.

6.3 Purchaser acknowledgement

The Purchaser acknowledges that Tasmanian Irrigation has relied on clauses 6.1 and 6.2 in entering this agreement.

7. Termination of agreement

7.1 Making time essential

If on or after the Completion Date, Completion of this agreement has not taken place then either Tasmanian Irrigation or the Purchaser may make time of the essence for Completion by providing twenty eight (28) calendar days notice to the other.

7.2 Right to terminate agreement for failure to perform

If at any time after time is made of the essence for Completion:

- (a) Completion has not occurred; and
- (b) a party ("the defaulting party") has failed to perform any of its obligations under this agreement by the time specified in this agreement or continues to fail to do so,

the other party may terminate this agreement by notice to the defaulting party without affecting any other right it might have.

7.3 Right to terminate for insolvency

If the Purchaser becomes Insolvent, Tasmanian Irrigation may terminate this agreement by notice to the Purchaser without affecting any other right it might have.

7.4 Consequences of Tasmanian Irrigation terminating agreement

If Tasmanian Irrigation terminates this agreement under clause 7.2 or clause 7.3, without prejudice to any other remedy Tasmanian Irrigation might have against the Purchaser:

- (a) Tasmanian Irrigation may keep the Deposit and any interest earned on it and any other money paid by the Purchaser to Tasmanian Irrigation; and
- (b) if Tasmanian Irrigation resells the Water Entitlements:
 - (i) the Purchaser must pay to Tasmanian Irrigation any deficiency arising on the resale and all expenses of the resale or any attempted sale; but
 - (ii) Tasmanian Irrigation may keep any profit on resale.

7.5 Consequences of Purchaser terminating agreement

If the Purchaser terminates this agreement because Tasmanian Irrigation has breached this agreement, without prejudice to any other remedy which the Purchaser might have against Tasmanian Irrigation, the Purchaser is absolutely entitled to a refund of the Deposit and any interest earned on it and any other money paid by the Purchaser to Tasmanian Irrigation.

7.6 Exclusive right of termination

The Purchaser may only terminate this agreement in accordance with the terms of this agreement.

8. Purchaser's default

8.1 Obligation to pay

If the Purchaser breaches this agreement by failing to complete the purchase of the Water Entitlements on the Completion Date, then, from the Completion Date until either Completion takes place or this agreement is effectively terminated by either party or by law, the Purchaser must pay to Tasmanian Irrigation:

- (a) interest calculated under clause 8.2;
- (b) the charges determined in the manner specified in clause 13.1 of the Irrigation Right which would have been granted on Completion in respect of the Volume and which would have applied under the Irrigation Right had it been granted; and
- (c) the charges determined in the manner specified in clause 12.1 of the Zoned Flow Delivery Right which would have been granted on Completion in respect of the Flow Rate and which would have applied under the Zoned Flow Delivery Right had it been granted.

8.2 Interest

- (a) Interest under this clause 8.2 accrues daily at the rate determined under clause 8.2(b) on all money that should have been paid by the Purchaser by the Completion Date, but that has not been either received by, or applied for the exclusive benefit of, Tasmanian Irrigation.
- (b) The interest rate for the purposes of clause 8.2 is the rate of two per cent (2%) per annum above the BBSY.

8.3 Recovery of collection costs

If an amount payable by the Purchaser under this agreement ("the debt") remain outstanding for longer than a reasonable time, as determined by Tasmanian Irrigation in its absolute discretion, then:

- (a) Tasmanian Irrigation may lodge the debt with a mercantile agent for recovery; and
- (b) the Purchaser must pay all legal costs and disbursements including the costs of the mercantile agent incurred by Tasmanian Irrigation in the recovery of the debt.

8.4 Condition to Tasmanian Irrigation's obligations to complete

Payment of the amounts required to be paid under this agreement is a condition precedent to Tasmanian Irrigation's obligations on Completion.

8.5 Separate right

Tasmanian Irrigation's right to recover interest and other payments under clause 8.1 and 8.2 is intended:

- (a) to survive the termination of other contractual obligations between the parties under this agreement; and
- (b) to be without prejudice and in addition to any other rights Tasmanian Irrigation might have including any right to forfeit the Deposit.

8.6 Tasmanian Irrigation's wilful default

No amount is payable under clause 8.1 if the Purchaser's failure to complete the purchase of the Water Entitlements is due to Tasmanian Irrigation's wilful default.

9. Nominee

9.1 Right to nominate

The Purchaser may nominate other persons or corporations in writing to complete the purchase of the Water Entitlements under this agreement.

9.2 Purchaser remains liable

If the Purchaser nominates other persons or corporations to complete the purchase of the Water Entitlements under this agreement, the Purchaser remains personally liable to Tasmanian Irrigation for the performance of all of the Purchaser's obligations under this agreement.

10. Dispute resolution

10.1 Process for resolution

If any dispute or difference between the Purchaser and Tasmanian Irrigation arises out of this agreement:

- (a) either the Purchaser or Tasmanian Irrigation may notify the other of them of the dispute or difference and invoke this clause 10.1;
- (b) the Purchaser and Tasmanian Irrigation must within fourteen (14) days after the notice referred to in clause 10.1(a) is given, meet and negotiate in good faith to attempt to resolve the dispute or difference;
- (c) if the dispute or difference is not resolved at a meeting held as required by clause 10.1(b) or the meeting has not taken place within fourteen (14) calendar days after the notice referred to in clause 10.1(a) is given, either the Purchaser or Tasmanian Irrigation may refer the dispute or difference to a mediator who, if not agreed by the parties, is appropriately qualified having regard to the nature of the dispute as appointed by the President of the Tasmanian Chapter of the Institute of Arbitrators & Mediators Australia; and
- (d) if the dispute or difference cannot be resolved by mediation, the dispute may be referred to litigation.

10.2 Continuing obligations

Despite the existence of the dispute or difference, each party must continue to carry out its obligations under this agreement.

10.3 Right to seek interlocutory relief

Nothing in this clause 10 prevents either party from seeking urgent interlocutory relief from a court of competent jurisdiction.

11. Notices

11.1 How given

A notice required or permitted to be given by one party to another party under this agreement must be in writing and is treated as being duly given if:

- (a) left at that party's residential address; or
- (b) sent by pre-paid mail to that party's postal address.

11.2 Receipt of notice

A notice given to a party under this agreement is treated as having been duly given and received:

- (a) when delivered (if left at the party's residential address); or
- (b) on the third Business Day after posting (if sent by pre-paid mail to the party's postal address).

11.3 Addresses

For the purpose of giving notices under this agreement:

- (a) each party's address is the address specified in the schedule or another address which that party notifies to each other party; and
- (b) each party's postal address is:

- (i) the postal address specified in the schedule or another postal address or which that party notifies to each other party; or
- (ii) that party's address if no postal address is specified in the schedule or notified to each other party.

12. General

12.1 Goods and Services Tax

- (a) All charges, fees and rates payable under this agreement are expressed exclusive of GST.
- (b) Where Tasmanian Irrigation makes a taxable supply to the Purchaser under this agreement:
 - (i) the price payable being for that taxable supply is increased by the amount of GST payable; and
 - (ii) Tasmanian Irrigation must provide a tax invoice to the Purchaser in respect of the taxable supply as required by the GST Act.

12.2 Indemnities

Each indemnity given in this agreement is a continuing obligation separate and independent from the other obligations and survives termination of this agreement.

12.3 Variation and waiver

No variation or waiver of, or any consent to any departure by a party from a provision of this agreement is of any force or effect unless it is confirmed in writing, signed by the parties and then that variation, waiver or consent is effective only to the extent for which it is made or given.

12.4 Severance of invalid provisions

If any provision of this agreement is invalid and not enforceable on its terms, other provisions which are self-sustaining and capable of separate performance with regard to the invalid provision, are and continue to be valid and enforceable on their terms.

12.5 Applicable law

This agreement must be interpreted under the law of the State of Tasmania.

12.6 Whole agreement

This agreement, in connection with its subject matter:

- (a) constitutes the sole and entire agreement among the parties; and
- (b) supersedes all prior agreements and understandings of the parties,

and a warranty, representation or guarantee in connection with the subject matter of this agreement or other term not contained or recorded in this agreement is of no force or effect.

12.7 Joint liability

Where more than one person accepts liability under any covenant or obligation herein each of those people shall be liable severally and every two or greater number of them shall be liable jointly.

12.8 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

12.9 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

Executed as an agreement

EXECUTION BY PURCHASERS WHO ARE NATURAL PERSONS

SIGNED by Purchaser 1

Signature _____

Name _____

in the presence of:

Signature _____

Name _____

Address _____

SIGNED by Purchaser 3

Signature _____

Name _____

in the presence of:

Signature _____

Name _____

Address _____

SIGNED by Purchaser 2

Signature _____

Name _____

in the presence of:

Signature _____

Name _____

Address _____

SIGNED by Purchaser 4

Signature _____

Name _____

in the presence of:

Signature _____

Name _____

Address _____

EXECUTION BY PURCHASERS WHO ARE A COMPANY

EXECUTED by Company 1 (insert Company Name)

under section 127(1) of the Corporations Act:

Director:

Signature _____

Name _____

Director/Secretary

Signature _____

Name _____

EXECUTED by Company 2 (insert Company Name)

under section 127(1) of the Corporations Act:

Director:

Signature _____

Name _____

Director/Secretary:

Signature _____

Name _____

EXECUTION BY PURCHASERS WHO ARE NOT A NATURAL PERSON OR COMPANY

SIGNED for and on behalf of **Entity 1** (insert Entity Name)

by:

Signature _____

Name _____

Position _____

in the presence of:

Signature _____

Name _____

Address _____

SIGNED for and on behalf of **Entity 2** (insert Entity Name)

by:

Signature _____

Name _____

Position _____

in the presence of:

Signature _____

Name _____

Address _____

EXECUTION BY TASMANIAN IRRIGATION PTY LTD

EXECUTED by Tasmanian Irrigation Pty Ltd pursuant to the Formal Instrument of Delegation.

Delegate:

Signature _____

Name _____

Position _____

Company Secretary:

Signature _____

Name _____

Date _____